

1 Vanessa R. Waldref  
2 United States Attorney  
3 Eastern District of Washington  
4 Dan Fruchter  
5 Tyler H.L. Tornabene  
6 Assistant United States Attorneys  
7 Post Office Box 1494  
8 Spokane, WA 99210-1494  
9 Telephone: (509) 353-2767

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 02, 2021**

SEAN F. McAVOY, CLERK

8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA,

11 Plaintiff,

Case No.: 2:21-cr-0163-SAB

12  
13 v.

**PLEA AGREEMENT**

14 ESTHER RAE TULLER,

15 Defendant.  
16  
17

18 Plaintiff, United States of America, by and through Vanessa R. Waldref, United  
19 States Attorney for the Eastern District of Washington, and Dan Fruchter and Tyler  
20 H.L. Tornabene, Assistant United States Attorneys, and Defendant Esther Rae Tuller  
21 ("Defendant") and the Defendant's counsel, Stephen R. Hormel, agree to the  
22 following Plea Agreement:

23 **1. Waiver of Indictment:**

24 Defendant, having been advised of the right to be charged by Indictment, agrees  
25 to waive that right and enter a plea of guilty to the charges brought by the United  
26 States in an Information.  
27  
28

**2. Guilty Plea and Maximum Statutory Penalties:**

Defendant agrees to plead guilty to the Information filed in the Eastern District of Washington, charging the Defendant with one count of Tampering with Consumer Products, in violation of 18 U.S.C. § 1365(a)(4). Defendant understands that violation of 18 U.S.C. § 1365(a)(4) is a Class C Felony that carries the following penalties: (1) not more than ten years imprisonment; (2) not more than three years of supervised release; (3) a fine of not more than \$250,000; and (4) a special penalty assessment in the amount of \$100.

Defendant further understands a violation of a condition of supervised release carries an additional penalty of re-imprisonment for all or part of the term of supervised release, pursuant to 18 U.S.C. § 3583(e)(3), without credit for time previously served on post release supervision.

**3. The Court is Not a Party to the Plea Agreement:**

The Court is not a party to this Plea Agreement and may accept or reject this Plea Agreement. Sentencing is a matter that is solely within the discretion of the Court. Defendant understands that the Court is under no obligation to accept any recommendations made by the United States and/or by Defendant; that the Court will obtain an independent report and sentencing recommendation from the U.S. Probation Office; and that the Court may, in its discretion, impose any sentence it deems appropriate up to the statutory maximum stated in this Plea Agreement.

Defendant acknowledges that no promises of any type have been made to Defendant with respect to the sentence the Court will impose in this matter. Defendant understands that the Court is required to consider the applicable sentencing guideline range, but may depart upward or downward under the appropriate circumstances.

1 The Defendant also understands that should the Court decide not to accept any  
2 of the parties' recommendations, that decision is not a basis for withdrawing from this  
3 Plea Agreement or a basis for withdrawing these pleas of guilty.

4 **4. Waiver of Constitutional Rights:**

5 Defendant understands that, by entering these pleas of guilty, Defendant is  
6 knowingly and voluntarily waiving certain constitutional rights, including:

- 7 a) the right to a jury trial;
- 8 b) the right to see, hear and question the witnesses;
- 9 c) the right to remain silent at trial;
- 10 d) the right to testify at trial; and
- 11 e) the right to compel witnesses to testify.

12 While Defendant is waiving certain constitutional rights, Defendant understands  
13 she retains the right to be assisted through the sentencing and any direct appeal of the  
14 conviction and sentence by an attorney who will be appointed at no cost if Defendant  
15 cannot afford to hire an attorney.

16 **5. Elements of the Offense:**

17 The United States and Defendant agree that in order to convict Defendant of  
18 Tampering with Consumer Products, in violation of 18 U.S.C. § 1365(a)(4), the  
19 United States would have to prove beyond a reasonable doubt the following elements:

- 20 First: The defendant tampered with, or attempted to tamper with, a  
21 consumer product, its labeling, or its container;
  - 22 Second: The consumer product affected interstate or foreign commerce; and
  - 23 Third: The defendant acted with reckless disregard for the risk that another  
24 person would be placed in danger of death or bodily injury and under  
25 circumstances manifesting extreme indifference to such risk.
- 26  
27  
28

1           **6. Factual Basis and Statement of Facts:**

2           The United States and Defendant stipulate and agree that the following facts are  
3 accurate; that the United States could prove these facts beyond a reasonable doubt at  
4 trial; and these facts constitute an adequate factual basis for Defendant's guilty plea.  
5 This statement of facts does not preclude either party from presenting and arguing, for  
6 sentencing purposes, additional facts that are relevant to the guideline computation or  
7 sentencing, unless otherwise prohibited in this agreement.

8           Between October 2012 and May 2020, Defendant ESTHER RAE TULLER was  
9 a licensed registered nurse in Washington State. Between August 2019 and April  
10 2020, Defendant ESTHER RAE TULLER was employed as a nurse at the Confluence  
11 Health Moses Lake Clinic (Confluence) located in Moses Lake, Washington, in the  
12 Eastern District of Washington. Defendant's position as a nurse provided her with  
13 access to controlled substances, including opioid narcotics such as morphine sulfate  
14 (morphine), which is used by Confluence for relieving pain associated with injuries  
15 and other medical conditions. Morphine is a controlled substance and consumer  
16 product that affects interstate and foreign commerce within the definition of 18 U.S.C.  
17 § 1365.

18           Between on or about August 1, 2019 and on or about April 10, 2020, while  
19 working at Confluence as a nurse, Defendant ESTHER RAE TULLER used a syringe  
20 to withdraw at least 17 vials of morphine, each vial containing 4 mL. After removing  
21 the morphine using a syringe, Defendant ESTHER RAE TULLER then replaced the  
22 morphine with saline solution (*i.e.* salt dissolved in water) and superglued the caps  
23 back onto the vials, in an attempt to conceal that she had taken the morphine and make  
24 them appear unopened. Defendant ESTHER RAE TULLER knowingly and  
25 intentionally took the morphine and replaced it with saline for her own personal use  
26 due to an addiction to opioids.

27           In removing the morphine and replacing it with saline, Defendant ESTHER  
28 RAE TULLER acted with reckless disregard for the risk that Confluence patients who

1 required morphine would be placed in danger of bodily injury in that their serious pain  
2 or other medical condition would go untreated due to Defendant ESTHER RAE  
3 TULLER's conduct in replacing the morphine with saline solution, which would not  
4 provide any pain relief. Defendant ESTHER RAE TULLER's conduct as described  
5 above manifested extreme indifference to that risk of bodily injury. When Confluence  
6 administered what it believed was morphine to one Confluence patient who was in  
7 pain, the patient did not experience any pain relief following administration of the vial  
8 with which Defendant ESTHER RAE TULLER had tampered, necessitating that  
9 patient being admitted to the emergency room.

10 On or about April 10, 2020, a staff nurse at Confluence noticed what appeared  
11 to be evidence of tampering as to vials of morphine in Confluence's controlled  
12 substance storage area. Laboratory testing confirmed that the vials had indeed been  
13 tampered with, in the manner described above.

14 **7. The United States Agrees Not to File Additional Charges:**

15 The United States Attorney's Office for the Eastern District of Washington and  
16 agrees not to bring any additional charges against Defendant based upon information  
17 in its possession at the time of this Plea Agreement and arising out of Defendant's  
18 conduct involving illegal activity charged in the Information pending in the Eastern  
19 District of Washington, unless Defendant breaches this Plea Agreement before  
20 sentencing and/or withdraws in any way from this Plea Agreement.

21 **8. United States Sentencing Guideline Calculations:**

22 Defendant understands and acknowledges that the United States Sentencing  
23 Guidelines (hereinafter USSG) are applicable to this case, and that the Court will  
24 determine Defendant's applicable sentencing guideline range at sentencing.

25 **a. Base Offense Level and Guideline Adjustments:**

26 The United States and the Defendant acknowledge that the Court is not bound  
27 by the parties' recommendation concerning the base offense level or the  
28 recommended guideline adjustments. Defendant reserves the right to seek other

1 downward specific offense characteristics, downward adjustments, or variances, and  
2 the United States reserves the right to oppose any such motion or argument.

3 The United States and Defendant agree that the base offense level for violation  
4 of 18 U.S.C. § 1365 is 25 pursuant to U.S.S.G. §2N1.1(a). The United States and  
5 Defendant further agree that a an additional 2-point upward adjustment is warranted  
6 pursuant to U.S.S.G. §3B1.3 because Defendant abused her position of trust, resulting  
7 in an adjusted offense level of 27.

8 The parties are not aware of, and do not intend at this time to seek, any other  
9 enhancements or adjustments under the guidelines.

10 **b. Acceptance of Responsibility:**

11 If Defendant pleads guilty and demonstrates a recognition and an affirmative  
12 acceptance of personal responsibility for the criminal conduct; provides complete and  
13 accurate information during the sentencing process; does not commit any obstructive  
14 conduct; and enters a plea of guilty no later than November 1, 2021, the United States  
15 will recommend that Defendant receive a two (2) level reduction for acceptance of  
16 responsibility. If Defendant's adjusted offense level is sixteen (16) or greater, then the  
17 United States will move for an additional one (1)-level reduction for timeliness. *See*  
18 U.S.S.G. §3E1.1(a) and (b).

19 Defendant and the United States agree that the United States may, at its option  
20 and upon written notice to Defendant, not recommend any downward reduction for  
21 acceptance of responsibility if, before sentencing, Defendant is charged or convicted  
22 of any criminal offense whatsoever, or if Defendant tests positive for any controlled  
23 substance.

24 Furthermore, the Defendant agrees to pay the mandatory special penalty  
25 assessments referenced in paragraph 11 to the Clerk of Court for the Eastern District  
26 of Washington, at or before sentencing, and shall provide a receipt from the Clerk to  
27 the United States before sentencing as proof of this payment, as a condition to this  
28 recommendation by the United States.

1                   **c. Criminal History:**

2           The United States and Defendant have made no agreement and make no  
3 representations as to the criminal history category, which shall be determined by the  
4 Court after the Presentence Investigation Report is completed.

5                   **9. Incarceration:**

6           The United States agrees to recommend a sentence at or below the low end of  
7 the sentencing guideline range determined by the Court. Defendant may recommend  
8 any legal sentence.

9                   **10. Criminal Fine:**

10          The United States and Defendant are free to make whatever recommendation  
11 concerning the imposition of a criminal fine they believe is appropriate.

12                   **11. Mandatory Special Penalty Assessment:**

13          Defendant agrees to pay the \$100 special penalty assessment for her conviction  
14 to the Clerk of Court for the Eastern District of Washington. *See* 18 U.S.C. § 3013.  
15 Defendant agrees, as a condition of this Plea Agreement, to pay the mandatory special  
16 penalty assessment in full at or before sentencing.

17                   **12. Restitution:**

18          The United States and Defendant agree that restitution is not applicable in this  
19 case.

20                   **13. Supervised Release:**

21          The parties agree to request a term of supervised release of 3 years following  
22 any term of imprisonment imposed by the Court, with all standard conditions of  
23 supervision. As an additional special condition, the United States and Defendant  
24 agree that during the period of any supervised release, that Defendant agree not to  
25 seek reinstatement of any nursing license, or to seek to engage or engage in any  
26 employment that involves medical or patient care. The United States is also free to  
27 recommend any additional special conditions of supervision at the time of sentencing  
28 and during the period of supervised release that it deems appropriate, and Defendant is



1 free to oppose any additional special conditions of supervision at the time of  
2 sentencing.

3 **14. Hyde Amendment Waiver**

4 The Defendant waives any claim under the Hyde Amendment, 18 U.S.C.  
5 § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out  
6 of the investigation or prosecution of this matter.

7 **15. Additional Violations of Law Can Void Plea Agreement:**

8 Defendant and the United States agree that the United States may, at its option  
9 and upon written notice to Defendant, withdraw from this Plea Agreement or modify  
10 its recommendation for sentence if, before sentence is imposed, Defendant is charged  
11 or convicted of any criminal offense whatsoever, or if Defendant tests positive for any  
12 controlled substance, *except as prescribed by a physician.* <sup>/s/DHF</sup>

13 **16. Waiver of Appeal and Collateral Attack Rights:**

14 Defendant hereby expressly waives her right to appeal her conviction, any  
15 restitution order, any fine, and the sentence of incarceration the Court imposes with  
16 the exception that Defendant may appeal the procedural and substantive  
17 reasonableness of any sentence of incarceration in excess of the applicable sentencing  
18 guideline range as determined by the Court.

19 **17. Integration Clause**

20 The United States and Defendant acknowledge that this document constitutes  
21 the entire Plea Agreement between the United States and Defendant, and no other  
22 promises, agreements, or conditions exist between the United States and Defendant.  
23 This Plea Agreement is binding only upon the United States Attorney's Office for the  
24 Eastern District of Washington and therefore cannot bind other federal, state or local  
25 authorities. The United States and Defendant agree that this agreement cannot be  
26 modified except in a writing that is signed by the United States and Defendant.



**Approvals and Signatures**

Agreed and submitted on behalf of the United States Attorney's Office for the  
Eastern District of Washington.

Vanessa R. Waldref  
United States Attorney



11/12/2021

Daniel Hugo Fruchter  
Assistant U.S. Attorney

Date



for

11/12/2021

Tyler H.L. Tornabene  
Assistant U.S. Attorney

Date

1 I have read this Plea Agreement and have carefully reviewed and discussed  
2 every part of the agreement with my attorney. I understand and voluntarily enter into  
3 this Plea Agreement. I have also consulted with my attorney about my rights, I  
4 understand those rights, and I am satisfied with the representation of my attorney in  
5 this case. No other promises or inducements have been made to me, other than those  
6 contained in this Plea Agreement and no one has threatened or forced me in any way  
7 to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

8 Esther Rae Tuller  
9 Esther Rae Tuller  
10 Defendant

11/10/2021  
Date

11 I have read this Plea Agreement and have discussed the contents of the  
12 agreement with my client. The Plea Agreement accurately and completely sets forth  
13 the entirety of the agreement between the parties. I concur in my client's decision to  
14 plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court  
15 should not accept Defendant's plea of guilty.

16 Stephen R. Hormel  
17 Stephen R. Hormel  
18 Attorney for Defendant

11/10/2021  
Date

19 Zachary L. Ays  
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12/2/2021